

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code Part 495. (This is a GIL).

May 3, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated March 18, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

This letter serves as a formal request for a ruling with respect to the application of New Jersey sales and use tax for my client ('COMPANY'), a corporation involved in telecommunications and Internet services. COMPANY is in the testing stage of this service and is beginning to develop its billing software. BUSINESS is a tax compliance and consulting corporation based out of CITY/STATE that specializes in state and local sales and use tax for telecommunications. Below please find all facts involved with the service COMPANY provides:

An Internet user, on the world wide web, would like further information on the company or product shown on a special web page. There is an icon on the screen whereby the user can click their mouse on this icon, thus generating a screen requesting a phone number where the user can be reached. Once the telephone number has been given, the user has the option of receiving a return phone call immediately or schedule it for another time.

Upon completing these actions, a message is sent to COMPANY's switch that a call needs to be initiated. COMPANY's switch contacts the owner of the web page and informs them of the call. Upon connection with the web page owner, the switch then establishes a call with the Internet user.

COMPANY invoices its customers, the web page owner, on a per minute basis for the call that is connected between the web page owner and the Internet surfer.

COMPANY also provides a voice mail service that can be used in connection with the call initiation. If the web surfer requests the call during non-business hours, the Internet user has the

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option to leave a voice mail message. The voice mail messages are kept on COMPANY's computer systems.

COMPANY invoices its customers, the web page owner, on a per minute basis for the call between the Internet surfer and the voice mail server. The voice mail server is housed in CITY/STATE2.

Voice mail messages can be retrieved by directly dialing a toll telephone number into the voice mail network. There is no charge to the customer for this type of access. If the customer is located in the United States, messages may also be retrieved by dialing a toll free number. The customer will be charged a fee on a per minute basis.

If the customer is located outside the United States, the customer may access a web page with an icon that will initiate a call between the customer and the voice mail network. The customer is billed on a per minute basis.

COMPANY also offers a service where web page owners can be reached by calling his personal toll free number or CITY/STATE2 exchange. Internet users can either speak, page, fax, leave a voice mail.

COMPANY invoices its customers on a per minute basis for the call that is connected. There is a one time set up fee charged to the customer for placing the icon on the web page. There is also a monthly recurring fee for the services described above.

I look forward to your response on the taxation of these services. Please forward your response to me at the below address:

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If you have any questions, please do not hesitate to contact me at ####.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of

material used, labor or service cost or any other expense whatsoever. Set-up fees, such as charges for installation of icons used in conjunction with switches operating the service you have described, are generally includable in gross charges.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers. Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in

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accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

In regards to monthly service charges, please note that the term "gross charges" is defined at 35 ILCS 630/2(a), and includes the amount paid for the act or privilege of originating or receiving telecommunications in Illinois and for all services and equipment provided in connection therewith by a retailer. See the enclosed copy of 86 Ill. Adm. Code 495.100. Access charges and monthly service fees are generally fully included in gross charges subject to the Telecommunications Excise Tax. They are not subject to the Retailers' Occupation Tax. That tax, as you know, applies only to the sale of tangible personal property at retail.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.